IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8383 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

HARSUKH UKABHAI KOLI

Appearance:

GOVERNMENT PLEADER for Petitioner

MR MURALI N DEVNANI for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 06/10/2000

ORAL JUDGEMENT

#. The petitioner, State, challenges by way of this petition under Article 226 and 227 of the Constitution the award of the Labour Court Junagadh in the Ref. (LCJ) No.1710/90, whereby the respondent workman is ordered to be reinstated with full backwages and costs.

#. The Learned A.G.P. vehemently argued that although the petitioner failed to lead any evidence before the Labour Court, the issues raised in its Written Statement were required to be properly dealt with by the Labour Court in the impugned award. He pointed out that the petitioner being Forest Officer engaged in the activities relating to forests, it was not an industry and despite that issue having been raised the Labour Court has not dealt with the same at all. It is further submitted that the respondent workman had not completed 240 days of service during the period of the year preceding his alleged termination. It is, therefore, urged that the matter is required to be remanded to the Labour Court for the petitioner to take appropriate steps for defending the case.

#. It is submitted on behalf of the respondent that as decided by the Hon'ble Supreme Court in the case of Chief Conservator of Forests and another Vs. Jagannath Maruti Kondhare, reported in A.I.R. 1996 SC 2898, the activities relating to forest are held to be an industry within the meaning and definition of Industrial Disputes Act. In any case, the petitioner has neither challenged the order of reference on any such ground nor cared to lead any evidence in support of the pleas taken in the Written Statement filed in the Labour Court. It is, however, fairly conceded that in view of the long period that has elapsed after the date of termination, the respondent is agreeable to waiving 50% of backwages.

#. Going through the impugned award it is clear that except for filing a Written Statement the petitioner has hardly done anything to defend the case. The Labour Court has recorded findings of fact and concluded, after appreciation of evidence, that the provisions of Sec.25F, 25G and 25H were violated in the matter of termination of service of the respondent. In an adversary system of adjudication, each party is expected to take care of his interest and substantite his plea before the Court and the Court as an impartial adjudicator is not supposed to make an inquiry of its own. In such circumstances, if the petitioner did not have sufficient opportunity to defend his case he could have made appropriate application before the Labour Court itself. Instead, the petitioner has filed the present petition after more than 8 months from the date of the impugned award, without assigning any reasons for the delay. This approach of the petitioner department cannot be appreciated or encouraged. Accordingly, the petition is required to be rejected. However, in view of the concession made on

behalf of the respondent the impugned award is modified to the extent that the respondent shall be reinstated with continuity of service but with only 50% of backwages. Rule is made absolute with no order as to costs.

kks